

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

HARRY SMITH, JR. and  
ROSLYN WOODARD SMITH,  
Individually and as Administrators of  
The ESTATE OF HARRY SMITH, III,

Plaintiffs,

v.

CIVIL ACTION NO. 04-1254-GMS

CITY OF WILMINGTON,

JOHN CIRITELLA, in his individual capacity  
and in his official capacity as a police officer of  
the Wilmington Police Department,

THOMAS DEMPSEY, in his individual capacity  
and in his official capacity as a police officer of  
the Wilmington Police Department, and

MATTHEW KURTEN, in his individual capacity  
and in his official capacity as a police officer of  
the Wilmington Police Department,

Defendants.

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**PLAINTIFFS' MOTION TO FILE A RESPONSE TO DEFENDANTS' REPLY BRIEF IN  
SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
And  
CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1.1**

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Plaintiffs, by their counsel, hereby respectfully move this Honorable Court for an order allowing them to file a response to defendants' reply brief in support of defendants' motion for summary judgment because defendants, in their reply brief, raise new matters. Plaintiffs request permission to file the following:

1) A 10-page or less response to the new matters raised in defendants' 24-page reply brief, which has attached thereto many new exhibits and cites 5 new cases not cited in their opening brief, specifically: *Beasley v. Piekutowski*; *Billington v. Smith*;

*Garrison v. Town of Bethany Beach; Marche v. Parrachak; VIM, Inc. v. Somerset Hotel Ass'n.*

Plaintiffs respectfully request an opportunity to address the new arguments, new documents and new cases cited by defendants in their reply brief. There is no prejudice to defendants if the Court grants this motion. There is prejudice to plaintiffs if defendants are allowed to raise for the first time new matters in their reply brief, without plaintiffs being able to respond thereto.

2) In their reply brief, defendants allege plaintiffs misrepresent the evidence contained in the exhibits attached to plaintiffs' brief, arguing the exhibits cited by plaintiffs do not provide support for plaintiffs' factual allegations. Because plaintiffs' brief is 39 pages long and has over 170 pages of exhibits attached thereto, plaintiffs respectfully request permission to re-file their brief on a CD-ROM with an interactive hyper-linking tool. This tool should reduce by as much as 75% the amount of time the Court spends checking the record or verifying whether there is evidentiary support for plaintiffs' factual allegations. Essentially, the tool will be designed so that there is just one document (brief and all exhibits), with each cite in the brief having a hyper-link to the specific page and/or paragraph in the specific exhibit cited. This tool will save the Court considerable time because the Court will not have to flip pages or scroll through numerous separate exhibits. As the Court reads the brief, it will simply click on a link right in the brief to see a particular supportive exhibit.

Because of the time involved in creating the interactive hyper-linking tool, should the Court grant this motion, plaintiffs would file this tool on or about July 30, 2006.

#### **CERTIFICATION OF COMPLIANCE WITH LOCAL RULE**

I hereby certify I complied with the local rule to confer with opposing counsel before filing this motion to respond to defendants' reply brief. Attorney John Parkins states he takes no position on this motion to file a response to defendants' reply brief.

Respectfully submitted this 19<sup>th</sup> day of July 2006.

s/Anne T. Sulton  
Anne T. Sulton  
Attorney for Plaintiffs  
Sulton Law Offices  
Post Office Box 2763  
Olympia, WA 98507  
Telephone: (609) 468-6029  
E-mail: annesulton@comcast.net

Local Counsel:

Kester I.H. Crosse [Bar I.D. 638]  
1214 King Street  
Wilmington, DE 19801  
Telephone: (302) 652-3141  
E-mail: kesterih@aol.com

#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2006, I electronically filed the foregoing Plaintiffs' Motion with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following e-mail address:

Attorney John Parkins E-mail Parkins@rlf.com

s/Anne T. Sulton  
Anne T. Sulton  
Attorney for Plaintiffs  
Sulton Law Offices  
Post Office Box 2763  
Olympia, WA 98507  
Telephone: (609) 468-6029  
E-Mail: annesulton@comcast.net